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KRISTA L. FREITAG

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11 WESTERN DIVISION

12 SECURITIES AND EXCHANGE
COMMISSION,

13 Plaintiff,

14 v.

15 WORLD CAPITAL MARKET INC.;
16 WCM777 INC.; WCM777 LTD. d/b/a
WCM777 ENTERPRISES, INC.; and
17 MING XU a/k/a PHIL MING XU,

18 Defendants,

19 KINGDOM CAPITAL MARKET, LLC;
20 MANNA HOLDING GROUP, LLC;
MANNA SOURCE INTERNATIONAL,
21 INC.; WCM RESOURCES, INC.;
AEON OPERATING, INC.; PMX
22 JEWELS, LTD.; TOPACIFIC INC.;
TO PACIFIC INC.; VINCENT J.
23 MESSINA; and INTERNATIONAL
MARKET VENTURES,

24 Relief Defendants.

Case No. CV-14-2334-JFW-MRW

NOTICE OF MOTION AND MOTION
FOR AUTHORITY TO PURSUE
CLAIMS AGAINST ROBERT SENSI

Date: December 8, 2014
Time: 1:30 p.m.
Ctrm: 16
Judge: Hon. John F. Walter

25
26 TO ALL INTERESTED PARTIES:

27 PLEASE TAKE NOTICE that on December 8, 2014, at 1:30 p.m. in
28 Courtroom 16 of the above-entitled Court, located at 312 North Spring Street, Los

1 Angeles, California 90012, Krista L. Freitag (the "Receiver"), the Court-appointed
2 permanent receiver for Defendants World Capital Market Inc.; WCM777 Inc.;
3 WCM777 Ltd. d/b/a WCM777 Enterprises, Inc.; and Relief Defendants Kingdom
4 Capital Market, LLC; Manna Holding Group, LLC; Manna Source
5 International, Inc.; WCM Resources, Inc.; ToPacific Inc.; To Pacific Inc.; and their
6 subsidiaries and affiliates (collectively, "Receivership Entities"), will and hereby
7 does move the Court for authority to pursue claims against Robert Sensi a.k.a.
8 Robert Mario Sensi, Bob Sensi and Stefano Robert Sensi Davenport ("Sensi"), and
9 for an Order of reappointment as Receiver to facilitate nationwide service of
10 summons and the exercise of personal jurisdiction over Sensi.

11 The Motion is based on this Notice of Motion and Motion, the attached
12 Memorandum of Points and Authorities, the Declaration of Krista L. Freitag, the
13 documents and pleadings already on file in this action, and upon such further oral
14 and documentary evidence as may be presented at the time of the hearing.

15 **Procedural Requirements:** If you oppose this Motion, you are required to
16 file your written opposition with the Office of the Clerk, United States District
17 Court, 312 North Spring Street, Los Angeles, California 90012 and serve the same
18 on the undersigned not later than twenty-one (21) calendar days prior to the hearing.

19 IF YOU FAIL TO FILE AND SERVE A WRITTEN OPPOSITION by the
20 above date, the Court may grant the requested relief without further notice. This
21 Motion is made following the conference of counsel pursuant to L.R. 7-3.

22

23 Dated: October 31, 2014

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
DAVID R. ZARO
TED FATES
TIM C. HSU

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By: /s/ TIM C. HSU

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TIM C. HSU
Attorneys for Court-appointed
Receiver KRISTA L. FREITAG

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Having investigated transfers made from the Receivership Entities to various entities and individuals, and contacted those entities and individuals about such transfers, the Receiver seeks authority to proceed with an action against Sensi, an individual who knew of the Ponzi scheme and received payments for facilitating operation of the scheme in foreign countries.

A. Transfers to Sensi

During the 60 days preceding the Receiver's appointment, Sensi received \$385,000 from the Receivership Entities for purported consulting services. (*See* Declaration of Krista L. Freitag ("Freitag Decl."), ¶ 4.) Specifically, the Receivership Entities made the following transfers to Sensi:

Date	Payor	Amount
2/3/14	ToPacific, Inc.	\$35,000
2/12/14	ToPacific, Inc.	\$40,000
2/20/14	ToPacific, Inc.	\$100,000
2/27/14	ToPacific, Inc.	\$120,000
3/10/14	To Pacific, Inc.	\$25,000
3/25/2014	WCM	\$65,000
Total		\$385,000

(Freitag Decl., ¶ 4.)

Through her counsel, the Receiver contacted Sensi about the transfers in April 2014. (Freitag Decl., ¶ 5.) Sensi promptly engaged counsel, a former Assistant United States Attorney, to represent him. (*Id.*) Sensi, through his counsel, claimed he was hired by the Receivership Entities to help handle complaints about the scheme from authorities in Peru, Taiwan, and Dubai. (*Id.*) Sensi claims he used

1 to work for the Central Intelligence Agency and therefore had contacts in these
2 locations. (*Id.*)

3 Through her counsel, the Receiver contacted counsel for Defendant Ming Xu.
4 (*Id.* at ¶ 6.) Through counsel, Xu stated that Sensi knew the Receivership Entities
5 were operating a Ponzi scheme and was asked to help handle complaints received
6 from foreign authorities. (*Id.*) The e-mail correspondences between Xu and Sensi
7 confirm Sensi was well aware that the Receivership Entities were accused of
8 running a Ponzi scheme. (*Id.*) In mid-February, an e-mail from Sensi presents an
9 "On-Going Business Plan" after the Ponzi scheme allegations. (*Id.*)

10 The Receiver issued a subpoena to Sensi, through his counsel, requiring Sensi
11 to produce documents. (*Id.* at ¶ 7.) On May 20, 2014, Sensi produced some
12 documents, including some e-mail communications and bank statements. (*Id.*)
13 Sensi did not produce any agreement showing he was hired to perform services or
14 any invoices for services actually performed. (*Id.*) Sensi claimed his agreement
15 with WCM was oral and no invoices were sent. (*Id.* at ¶ 8.) Sensi also claimed
16 some of the funds he received were reimbursements for travel expenses. (*Id.*)
17 Accordingly, the Receiver demanded that Sensi produce receipts reflecting the
18 expenses he incurred. (*Id.*) Sensi's counsel then reported Sensi was going through
19 serious medical issues and was unable to produce documents or defend himself in
20 the event of a lawsuit. (*Id.*) The Receiver waited several weeks until Sensi's
21 counsel reported Sensi had recovered from his medical issues. (*Id.*) Since that time,
22 however, Sensi still has not produced evidence of the expenses he claims he
23 incurred, or additional bank documentation to support: (a) numerous transfers made
24 to other bank accounts and/or (b) checks written on the account into which the
25 ToPacific and WCM funds were wired. (*Id.*)

26 The Receiver demanded Sensi return the funds and offered to settle the
27 receivership estate's claims for \$335,000, subject to Court approval. (*Id.* at ¶ 9.)
28 Sensi rejected the offer. (*Id.*) Although the Preliminary Injunction Order authorizes

1 the Receiver to "institute, pursue, and prosecute all claims and causes of action" on
2 behalf of the Receivership Entities, commencing lawsuits involves considerable
3 time and expense. Accordingly, the Receiver seeks specific authority to proceed
4 with an action against Sensi to recover the full amount of \$385,000. (*Id.* at ¶ 10.)

5 **II. ARGUMENT**

6 "The power of a district court to impose a receivership or grant other forms of
7 ancillary relief does not in the first instance depend on a statutory grant of power
8 from the securities laws. Rather, the authority derives from the inherent power of a
9 court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369
10 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly
11 and efficient administration of the estate by the district court for the benefit of
12 creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). As the appointment
13 of a receiver is authorized by the broad equitable powers of the court, any
14 distribution of assets must also be done equitably and fairly. *See SEC v. Elliot*,
15 953 F.2d 1560, 1569 (11th Cir. 1992).

16 District courts have the broad power of a court of equity to determine the
17 appropriate action in the administration and supervision of an equity receivership.
18 *See SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005). The Ninth
19 Circuit explained:

20 A district court's power to supervise an equity receivership
21 and to determine the appropriate action to be taken in the
22 administration of the receivership is extremely broad. The
23 district court has broad powers and wide discretion to
24 determine the appropriate relief in an equity receivership.
25 The basis for this broad deference to the district court's
26 supervisory role in equity receiverships arises out of the
27 fact that most receiverships involve multiple parties and
28 complex transactions. A district court's decision
concerning the supervision of an equitable receivership is
reviewed for abuse of discretion.

26 *Id.* (citations omitted); *see also Commodities Futures Trading Comm'n. v.*
27 *Topworth Int'l, Ltd.*, 205 F.3d 1107, 1115 (9th Cir. 1999) ("This court affords 'broad
28 deference' to the court's supervisory role, and 'we generally uphold reasonable

1 procedures instituted by the district court that serve th[e] purpose' of orderly and
2 efficient administration of the receivership for the benefit of creditors.").
3 Accordingly, the Court has broad equitable powers and discretion in the
4 administration of the receivership estate and disposition of receivership assets.

5 **A. Claims Against Sensi**

6 Here, the Receiver seeks authority to pursue claims against Sensi to recover
7 assets of the Receivership Entities that were transferred without any equivalent
8 value provided in exchange. The Receiver's investigation indicates Sensi received
9 the transfers knowing the Receivership Entities were operating a Ponzi scheme and
10 any services he provided were intended to facilitate the continued operation of the
11 scheme in foreign countries. Sensi has not articulated a legal or factual basis for
12 refusing to return the \$385,000. (Freitag Decl., ¶¶ 5-8.) The Receiver offered to
13 settle for \$335,000 (subject to Court approval), but Sensi rejected the offer. (*Id.* at
14 ¶ 9.) Accordingly, the Receiver believes further negotiations will not be fruitful and
15 an action for disgorgement against Sensi is necessary. (*Id.* at ¶ 10.)

16 Based on the above, the Receiver intends to pursue claims against Sensi under
17 California's Uniform Fraudulent Transfer Act ("CUFTA"), Cal. Civ. Code § 3439 *et*
18 *seq.* for disgorgement of the full \$385,000 transferred from ToPacific and WCM.
19 (Freitag Decl., ¶ 10, Ex. A.) A true and correct copy of the draft complaint the
20 Receiver intends to file against Sensi is appended to the Receiver's declaration filed
21 concurrently herewith. (*Id.*)

22 Under the CUFTA, a transfer is subject to disgorgement when the transfer is
23 made with (1) actual intent to defraud, or (2) constructive fraudulent intent based on
24 the lack of reasonably equivalent value provided in exchange. Cal. Civ. Code
25 § 3439.04(a). Intent to defraud is presumed when the payments were made from
26 entities operating a Ponzi scheme. *In re Cohen*, 199 B.R. 709,717 (B.A.P. 9th Cir.
27 1996); *see also Donell v. Kowell*, 533 F.3d 762, 767 (9th Cir. 2007); *In re AFI*
28 *Holding, Inc.*, 525 F.3d 700, 704 (9th Cir. 2008). Federal equity receivers have

1 standing to pursue fraudulent transfer claims on behalf of entities in receivership.
2 *Donell*, 533 F.3d at 776-777.

3 Here, Sensi received \$385,000 from the Receivership Entities without
4 providing any value in return. Any services he provided were performed knowing
5 he was facilitating continued operations of the fraudulent scheme in foreign
6 countries. WCM and Xu's intent to defraud will likely be presumed in connection
7 with the transfers to Sensi. The Securities and Exchange Commission
8 ("Commission") submitted compelling evidence of a Ponzi scheme when it filed its
9 complaint. The Court determined the Commission had made a *prima facie* case and
10 immediately appointed the Receiver. Defendants have not disputed the
11 Commission's allegations of a Ponzi scheme. Finally, the Receiver's investigation
12 and findings to date support and confirm that the Defendants were operating a Ponzi
13 scheme. ToPacific was one of the entities used to receive funds raised from
14 investors in the scheme. Therefore, the transfers to Sensi will likely be presumed to
15 have been made with actual intent to defraud.

16 Accordingly, the entire \$385,000 in funds paid to Sensi is subject to
17 disgorgement as a fraudulent transfer. Likewise, because Sensi has been unjustly
18 enriched, he holds the \$385,000 in constructive trust for the Receivership Entities.

19 **B. The Receiver will endeavor to keep costs to a minimum and**
20 **continue to evaluate the likely benefit to the receivership estate.**

21 The Receiver has consulted with her counsel, Allen Matkins, and believes the
22 legal fees for the action could be as low as \$15,000 in the event of a prompt
23 settlement, and as much as \$200,000 in the event of a full trial. (Freitag Decl.,
24 ¶ 11.) However, the Receiver believes a trial is highly unlikely and the case will
25 likely be resolved via settlement or summary judgment with legal fees of \$75,000 or
26 less. (*Id.*) As with all matters, the Receiver and Allen Matkins will make every
27 effort to minimize administrative expenses associated with the proposed action.
28 (Freitag Decl., ¶ 12.) Throughout the litigation, the Receiver and Allen Matkins will

1 continue to monitor the costs and potential net benefit to the receivership estate.
2 (*Id.*) In her discretion, the Receiver may conduct asset investigations regarding
3 Sensi to aid in assessing collectability of a judgment. (*Id.*) The records and
4 information obtained to date suggest that a judgment would likely be collectable.
5 (*Id.*)

6 **C. A Reappointment Order is Appropriate and Necessary.**

7 Based on records gathered by the Receiver, Sensi's principal place of
8 residence is either in Palm Beach, Florida, or Gambrills, Maryland. (Freitag Decl.,
9 ¶ 13.) Pursuing claims against Sensi in these jurisdictions will involve additional
10 expense to hire local counsel and will waste judicial resources in that this Court is
11 already familiar with the facts relating to the Receivership Entities.

12 Under 28 U.S.C. §§ 754 and 1692, the Receiver can establish personal
13 jurisdiction over Sensi in this Court by filing the Complaint and Preliminary
14 Injunction Order in the Southern District of Florida and District of Maryland and
15 personally serving Sensi in those jurisdictions. *See SEC v. Ross*, 504 F.3d 1130,
16 1145-46 (9th Cir. 2007) ("§ 1692 extends 'the territorial jurisdiction of the
17 appointing court ... to any district of the United States where property believed to be
18 that of the receivership estate is found, provided that the proper documents have
19 been filed in each such district as required by § 754.'") (quoting *SEC v. Bilzerian*,
20 378 F.3d 1100 (D.C. Cir. 2004)); *see also SEC v. Vision Comm.*, 74 F.3d 287, 291
21 (D.C. Cir. 1996).

22 However, the Receiver was not aware of Mr. Sensi's location until after the
23 10-day period for filings in the relevant district courts under 28 U.S.C. § 754
24 expired. (Freitag Decl., ¶ 13.) Thus, in order to conserve receivership estate
25 resources for the proposed action against Sensi, and to properly effectuate
26 nationwide service of summons upon him under 28 U.S.C. §§ 754 and 1692 in order
27 to establish personal jurisdiction over him in this Court, the Receiver requests an
28 Order reappointing her as Receiver for the Receivership Entities. A reappointment

1 of the Receiver would allow her to effectuate § 754 filings in the appropriate district
2 courts in order to facilitate the proposed action against Sensi. *See SEC v. American*
3 *Cap. Invs.*, 98 F.3d 1133, 1143 (9th Cir. 1996) (entry of appointment order restarts
4 10-day filing window under § 754); *Vision Comm.*, 74 F.3d at 291 (finding the
5 same).

6 Here, it is equitable and appropriate to enter an order of reappointment. The
7 Receiver had no knowledge at the outset of her appointment where Sensi resided or
8 even that there existed claims for disgorgement against him. (Freitag Decl., ¶ 13.)
9 Thus, she could not have effectuated a § 754 filing within the 10-day period as
10 required to establish *in rem* jurisdiction over receivership assets held by Sensi
11 subject to disgorgement. *See Vision Comm.*, 74 F.3d at 290-91 (impossibility is a
12 compelling reason to forego strict compliance with § 754). As explained above,
13 Sensi is the recipient of \$385,000 in receivership funds that are subject to
14 disgorgement. Absent an order of reappointment, the receivership estate would
15 incur significant additional costs to pursue the disgorgement claims against Sensi,
16 including hiring local counsel, commencing and prosecuting action in a foreign
17 state, and must present the case before a court that is unfamiliar with the issues
18 presented by this complex receivership; issues which are most efficiently resolved
19 by this Court. (Freitag Decl., ¶ 13.) Furthermore, the short delay in filing the
20 required documents in the relevant district courts has not prejudiced Sensi in any
21 way. Accordingly, the Court should reappoint the Receiver over the Receivership
22 Entities on terms identical to her current appointment.

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